MAYPOLE CORPORATION, ET AL.

IBLA 96-371 Decided February 8, 1999

Appeal from a Decision of the Arizona State Office, Bureau of Land Management, rejecting three Applications for Conveyance of Federally-Owned Mineral Interests. AZA-29542 through AZA-29544.

Request for hearing denied; decision affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

   BLM properly rejects an application for conveyance of a Federally-owned mineral interest, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1994), when that interest is withdrawn from appropriation, and the withdrawal can only be modified or revoked by act of Congress.

APPEARANCES: S. Leonard Scheff, Esq., Tucson, Arizona, for Appellants.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Maypole Corporation, North Fork Investment Company, and MPL Communications, Inc. (Appellants), have appealed from a May 2, 1996, Decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting their three Applications for Conveyance of Federally-Owned Mineral Interests (AZA-29542, AZA-29543, and AZA-29544, respectively) because the interests applied for were withdrawn from appropriation.

On March 8, 1996, Appellants filed three applications seeking a conveyance of Federally-owned mineral interests. The applications, as amended on April 8, 1996, describe about 580 acres of contiguous land situated in Ts. 13 and 14 S., R. 16 E., Gila and Salt River Meridian, Pima County, Arizona, on the eastern outskirts of Tucson, Arizona, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1994). Appellants, who own the surface estate of the lands at issue, seek to merge the surface and mineral estates so that they can proceed with the subdivision and residential development of the land. They assert that such nonmineral development, which is a more beneficial use of the land, is being interfered with or precluded by retention of the mineral interests by the United States.

In its May 1996 Decision, BLM rejected the three applications in their entirety because the mineral interests were either not owned by the United States or withdrawn from appropriation under the public land laws. In the case of the 107.44 acres of land situated in lots 1 and 2, sec. 2, T. 14 S., R. 16 E., Gila and Salt River Meridian, Pima County, Arizona, which were included in Application No. AZA-29544, BLM noted that the surface and mineral estates had vested in the State of Arizona on February 14, 1912, pursuant to section 24 of the Act of June 20, 1910, ch. 310, 36 Stat. 557, 572.

In the case of the remainder of the land, which was included in all of the applications, BLM noted that Congress had, in the Act of October 5, 1962, Pub. L. No. 87-747, 76 Stat. 743, withdrawn the Federally-owned mineral interests from appropriation under the public land laws. This land is described as part of lots 1-3, lots 4-8, part of the SW¼NE¼, E½SW¼, and W½SE¼ sec. 34, and the N½N½, S½NW¼, and part of W½NE¼ and S½ sec. 35, T. 13 S., R. 16 E., and part of lot 4, sec. 2, T. 14 S., R. 16 E., Gila and Salt River Meridian, Pima County, Arizona.

Appellants appealed from BLM's May 1996 Decision, contending that BLM should remove the mineral reservation from the public record and convey them those interests pursuant to section 209(b) of FLPMA. They argue that the reservation has lost its significance precisely because entry and appropriation under the mining laws is now and for the foreseeable future, precluded by the Congressional withdrawal imposed by the Act of October 5, 1962. They also argue that, based on private assays of rock and soil samples submitted with their applications, the reservation has no significance because there are no valuable minerals in the land which would be subject to entry and appropriation under the mining laws. Appellants further note that, so long as it persists, the reservation is causing them real economic harm because it is delaying or preventing them from selling the land for residential development purposes. Appellants argue that foreign and out- of-state purchasers are wary of buying land where Congress may at some future time repeal the Congressional withdrawal and permit exploitation of the reserved minerals.

[1] Section 209(b)(1) of FLPMA authorizes the Secretary of the Interior to convey Federally-owned mineral interests to the private owners of the overlying surface estate

> if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

43 U.S.C. § 1719(b)(1) (1994).

Under the specific facts of this appeal, it is clear that the Federally-owned mineral interests in all of the land covered by Appellants' applications in secs. 34 and 35, T. 13 S., R. 16 E., and part of lot 4,

sec. 2, T. 14 S., R. 16 E., Gila and Salt River Meridian, Pima County, Arizona, were withdrawn from appropriation under the public land laws by the Act of October 5, 1962. That Act specifically provided that the "withdrawal effected by this Act * * * shall not be modified or revoked except by Act of Congress." 76 Stat. 743 (1962) (emphasis added).

Thus, BLM does not have the authority to modify or rescind the withdrawal, even were it established that there are no valuable minerals in the subject land suitable for appropriation under the Mining Law of 1872, as amended, 30 U.S.C. §§ 21-54 (1994). Nor may BLM do so because the withdrawal is interfering with or precluding appropriate nonmineral development of the land. Congress has retained that authority under the Act. See also 43 U.S.C. § 1714(j). Therefore, we must conclude that BLM's rejection of Appellants' three applications for Conveyance of Federally-Owned Mineral Interests was proper.

Finally, Appellants request a telephonic hearing or interview before the appeal is decided. However, they have failed to show how granting their request would facilitate the resolution of any material question of fact. See 43 C.F.R. § 4.415. Thus, the request is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Appellants' request for hearing is denied and the Decision appealed from is affirmed.

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John H. Kelly
Administrative Judge

I concur:

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James L. Byrnes
Chief Administrative Judge